

VICKIE J. LANDIS

IBLA 81-355

Decided April 6, 1981

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 39005.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Sole Party in Interest--Words and Phrases

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

2. Oil and Gas Leases: Applications: Drawings

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

APPEARANCES: Lynn J. Farnworth, Esq., Moscow, Idaho, for appellant; John H. Harrington, Esq., Office of the Solicitor, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Vickie J. Landis has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 7, 1981, rejecting oil and gas offer NM 39005. Appellant's offer was drawn number 2 for parcel No. NM-5 at the simultaneous drawing held November 14, 1979. 1/

The BLM decision stated that Vickie J. Landis had entered into a "Pool Agreement for the Filing of BLM Entry Cards" with 12 other persons on March 18, 1978. The decision continued:

From the wording on the Agreement, we have determined that all of the parties would benefit from a lease when issued. Therefore, all are other parties in interest. Vickie J. Landis failed to comply with the Regulations Title 43 CFR 3102.7 which states that if there are other parties interested in the offer a separate statement must be signed by them and the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral and a copy of such agreement if written. See Wayne E. DeBord, et al., 50 IBLA 216 (1980).

In addition BLM noted that 10 of those persons, as well as appellant, filed offers for parcel No. NM-5 and ruled that the filings violated the prohibition against multiple filings in 43 CFR 3112.5-2 because of the joint interest each held in another's offers under the pool agreement. 2/

1/ The drawing card of Harvey E. Yates, Jr., drawn with first priority for parcel No. NM-5, was disqualified when Yates failed to submit timely additional evidence requested by BLM. He did not appeal this rejection.

2/ The other signators of the agreement are listed below. Those indicated by an asterisk also filed offers for parcel No. NM-5.

Paul H. Landis*	Henry E. Cobb*
Ilean M. Landis*	Kristie R. Cobb*
Willis L. Lawton, Jr.	Daniel L. Morgan*
Terrie K. DeBord*	Diane M. Weeks*
Vincent J. Landis*	Phillip M. Weeks*
Judith H. Lawton	Wayne E. DeBord*

This same pool agreement was the subject of the Board's decision in Wayne E. DeBord, 50 IBLA 216, 87 I.D. 465 (1980), wherein the Board affirmed rejection of various offers to lease and cancellation of certain oil and gas leases of appellant and the other signators of the pool agreement. The Board ruled that the appellants had violated 43 CFR 3102.7 and 43 CFR 3112.5-2. 3/

In her statement of reasons in the present case, appellant admits that the pool agreement at issue is the same one which was before the Board in Wayne E. DeBord, supra, and urges, in effect, that we reconsider our conclusions as to the nature of the agreement. She contends that there is an ambiguity in the agreement that has been ignored by both BLM and this Board and that as a result appellant must be allowed to submit extrinsic evidence to show the intent of the parties with respect to the agreement and the interest held by the parties. In addition, she reiterates many of the same arguments submitted for the Board's consideration in the DeBord appeals.

[1] Departmental regulation, 43 CFR 3102.7, provides that a separate statement signed by "other interested parties" and the offeror, "setting forth the nature and extent of the interest of each in the offer," and a copy of their written agreement must be filed "not later than 15 days after the filing of the lease offer." Failure to comply will result in rejection of the lease offer or cancellation of any lease issued pursuant to the offer. Mildred A. Moss, 28 IBLA 364 (1977), sustained, Moss v. Andrus, Civ. No. 78-1050 (10th Cir. Sept. 20, 1978).

In Wayne E. DeBord, supra, we fully examined the question of whether, under the pool agreement at issue, there were "other interested parties" to appellant's offer such that appellant should have complied with the disclosure requirements of the regulation and we do not find that appellant's arguments on appeal in this case warrant changing our analysis and conclusions. In that case we stated:

[Paul H.] Landis has an interest in each of the lease offers made pursuant to the pool agreement. He advances funds for filing entry cards and paying annual lease rentals under the terms of the agreement. He is also entitled to impose an unspecified charge on the pool as a "consultation fee," plus a general charge for office and clerical expenses. He is entitled to be reimbursed with interest from the proceeds of the sale or assignment of any lease issued, for which he

3/ 43 CFR Parts 3100 and 3110 were amended effective June 16, 1980. 45 FR 35156 (May 23, 1980). References herein are to 43 CFR Parts 3100 and 3110 (1979).

may secure payment by "liens or other legal means." This is participation in the issues or profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).

* * * [U]nder the agreement Landis has a contractual right to be reimbursed with interest from the proceeds of the sale of any lease issued, and not a general right of repayment. The cumulative debt owed to Landis by the pool is not required to be apportioned to the specific lease or offer or particular pool member for which it was incurred. The proceeds from any lease of any member can be used by Landis to reduce or discharge the debt owed to him by all the members for services rendered in connection with all the offers and leases involved.

Further, the parties to the pool agreement have a joint interest in each other's offers made pursuant to the agreement by virtue of the fact that under the agreement Landis is reimbursed for the expenses incurred in filing their entry cards and paying their rentals from the proceeds of the sale of any lease issued, for which he may secure payment by "liens or other legal means." The proceeds from the sale of any lease issued constitute a central pool in which each party participates. This clearly is participation in the profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).

Appellants' contention that the pool agreement gave no enforceable right against any lease to Landis or any party to the agreement is incorrect. Pool members may withdraw only as to the filing of new entry cards. The definition of "interest" is broad. It includes legally enforceable rights, claims, see H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979), and participation in profits. 43 CFR 3100.0-5(b). [Emphasis in original.]

DeBord, supra at 220, 87 I.D. at 468, 469.

On appeal in the present case, appellant identifies an alleged ambiguity between the following language in clause 1 and that in clause 4 of the pool agreement:

1. Any or all members, both present and future, of the POOL, who may have their entry card drawn for annual leases * * * agree jointly and individually, to pay all expenses that have been incurred by and through this

Agreement * * * from the proceeds of the sale of any said lease, immediately upon receipt of said proceeds.

* * * * *

4. It is expressly agreed and covenanted by and between the parties that all of said expenses and charges as detailed hereinabove may be paid in full or in part from: receipts from the sale of any leases obtained through the lottery drawing by the Bureau of Land Management of entry cards filed under this Agreement; assignments of any portion or part of any such lease obtained from any such drawing; or by any other approved property or negotiable instrument acceptable to LANDIS. All of said payments * * * must be subsequent to the issuance of any lease or leases obtained from a winning drawing of entry cards filed under this Agreement and to the sale of said lease to a purchaser insofar that a certain value can be assessed said lease or assignment by both parties. [Emphasis supplied.]

We agree that the above-quoted language, on the one hand, seems to require payments only from the proceeds of the sale of a lease and then, on the other, seems to allow the parties some discretion in the source of the payment, but we find that the discrepancy is not critical to our analysis of the pool agreement. Regardless of the source of a party's payment ultimately, what is important is that Paul Landis' right to payment for expenses arises only after issuance and subsequent sale or assignment of a lease obtained in a BLM drawing and may be enforced by Landis against the proceeds of the lease's sale by "liens or other legal means." We find no need for additional evidence clarifying the parties' intent on this point.

BLM properly rejected appellant's lease offer for failure to comply with 43 CFR 3102.7.

[2] Similarly we uphold BLM's rejection of the offer for violating the prohibition against multiple filings in 43 CFR 3112.5. Since we have found that all of the parties to the pool agreement have a joint interest in each other's lease offers, the filing of offers by 10 of the parties for parcel NM-5 constitutes a multiple filing prohibited by 43 CFR 3112.5-2. As we stated in DeBord, supra at 222, 87 I.D. at 470, "[t]he profits from any lease acquired could be used to reduce the debt owed collectively to Landis by all members of the pool. The agreement gave them a greater probability of success in obtaining an interest in any lease issued."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

